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OFFICE OF PETITIONS

In re Patent No. 7,062,359 :
Hans Bjorklund : DECISION ON REQUEST FOR
Issue Date: June 13, 2006 : RECONSIDERATION OF
Application No. 10/025,963 : PATENT TERM ADJUSTMENT
Filed: December 26, 2001 :
Atty Docket No. 66291-0311-2 :

This is a decision on the "REQUEST FOR CORRECTION TO PATENT TERM ADJUSTMENT," filed June 1, 2006. Patentee requests that the patent term adjustment of seven hundred thirty-seven (737) days be corrected.

The request for reconsideration of the patent term adjustment under § 1.705(d) is **DISMISSED**.

Patentee is given **TWO (2) MONTHS** from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

On June 13, 2006, application No. 10/025,963 matured into Patent No. 7,062,359. The instant request for reconsideration filed June 1, 2006, was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment (PTA) of 737 days. The initial PTA of 419 days was increased by 438 days for Office delay in issuing the patent after payment of the issue fee and satisfaction of all outstanding requirements, but reduced by 120

days pursuant to 37 CFR § 1.704(c)(10) for the submission of drawings after the mailing of the notice of allowance.

The reduction of 120 days is in dispute. Patentee acknowledges submitting a replacement sheet of drawings on November 10, 2004. Patentee argues that the replacement sheet had been filed on August 4, 2004, and that the sheet was again filed on November 10, 2004 in response to the request for replacement drawings mailed with the Notice of Allowance on November 1, 2004.

Patentee's argument has been considered, but is not persuasive. The submission of a response to the examiner's reasons for allowance or a request to correct an error or omission in the "Notice of Allowance" or "Notice of Allowability" is not considered a failure to engage in reasonable efforts to conclude processing or examination of an application. See *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance*, 1247 OG 111 (June 26, 2001; See also MPEP 2700. However, the filing of drawings after the mailing of a Notice of Allowance is properly a basis for reduction of patent term adjustment.

37 CFR § 1.704(c)(10) provides that:

Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;

or

(ii) Four months;

In this instance, it is undisputed that rather than file an argument that the Notice was in error, patentee filed drawings after the mailing of the Notice of Allowance. Other than those papers identified in this Notice, all papers filed after allowance of an application substantially delay the Office's ability to process an application for a patent because the Office does not wait until payment of the Issue Fee to begin the

patent issue process. As a result, 37 CFR 1.704(c)(10) does not distinguish between papers that are and are not required by the Office. Filing of any drawings after allowance will be treated as a failure to engage in reasonable efforts to conclude prosecution.

Furthermore, the drawings filed November 10, 2004 are not merely a resubmission of the drawings filed August 4, 2004. The drawings filed August 4, 2004 are different from the drawings filed November 10, 2004.

Accordingly, pursuant to § 1.704(c)(10), the patent term adjustment was properly reduced by the lesser number of days, 120, counting the number of days in the period beginning on the date the drawings were filed, November 10, 2004, and ending on the date of issuance of the patent, May 24, 2006.

In view thereof, the reduction of 120 days was proper

It is concluded that the patent properly issued with a revised Patent Term Adjustment of seven hundred thirty-seven (737) days.

Receipt is acknowledged of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this decision may be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, stylized loop at the end.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions